Tina I. Mangarpan, Esq., Bar No. 117898
FORD, WALKER, HAGGERTY & BEHAR
One World Trade Center
Twenty-Seventh Floor
Long Beach, California 90831-2700
(562) 983-2500

FILED
08 AUG 21 PM 1:58
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: [signature] DEPUTY

Attorneys for Defendant, COLONY CONSOLIDATED, LP

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LENETTE BARKER,

Plaintiff,

vs.

HIHC, LLC, A California Limited Liability Company; COLONY CONSOLIDATED, L.P., A Limited Partnership, and DOES 1 through 100, inclusive

Defendants.

No. '08 CV 1547 LAB RBB

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. SECTION 1441(b) - FEDERAL QUESTION

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that defendant, COLONY CONSOIDATED, LP, hereby removes to this Court the state court action described below.

1. On July 16, 2008, an action was commenced in the Superior Court of the State of California, County of San Diego, entitled LENETTE BARKER v. HIHC, LLC, A California Limited Liability Company; COLONY CONSOLIDATED, L.P., A Limited Partnership, Does 1 through 100, Inclusive, as Case Number 37-2008-00087782-CU-CR-CTL. A copy of the Complaint is attached hereto as Exhibit "A."

CR

2. The first date upon which defendant received a copy of said Complaint was July 23, 2008.

3. This action is a civil action of which the Court has original jurisdiction under 28 U.S.C. Section 1331, and is one which may be removed to this Court by defendant pursuant to the provisions of 28 U.S.C. Section 1441(b) in that it arises under statutes of the United States: specifically, the Americans with Disablities Act of 1990, Title III, 42 U.S.C.S. 12101, et seq.

4. There are no other named defendants to defendant's knowledge that have been served with the Summons and Complaint. The defendants identified as "Does 1 through 100" in plaintiff's Complaint are merely fictitious parties against whom no cause of action can be validly alleged.

5. This notice is filed within thirty (30) days after defendant's initial notice of this action.

6. Following the filing of this notice with this Court, written notice of the filing of same will be provided to all attorneys of record, as required by law.

7. Following the filing of this notice with this Court, a true and correct copy of same will be filed with the Clerk of the Superior Court of the State of California, County of Los Angeles, as required by law.

8. Attached as Exhibit "A" to this notice is a true and legible copy of all process, pleadings, orders and other papers or exhibits of every kind on file in the Superior Court of the State of California, County of Los Angeles.

///

///

///

///

///

///

///

///

9. No previous application for relief sought herein has been made to this Court or any other Court.

Dated: August 20, 2008

FORD, WALKER, HAGGERTY & BEHAR

BY: [signature]
TINA I. MANGARPAN, ESQ.
Attorneys for Defendant,
COLONY CONSOLIDATED, LP

K:\CLIENT\08M\09\017\Pleadings\PL Ntc Removal.doc

(PROOF OF SERVICE BY MAIL – F.R.Civ.P. 5)
BARKER v. HIHC, LLC, et al.
USDC SOUTHERN DISTRICT

UNITED STATES DISTRICT COURT)
)
CENTRAL DISTRICT OF CALIFORINA)

I am employed in the aforesaid county; I am over the age of eighteen years and not a party to the within entitled action; my business address is: One World Trade Center, Twenty-Seventh Floor, Long Beach, California 90831-2700

On August 21, 2008, I served the within: **NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. SECTION 1441(b) FEDERAL QUESTION** on the interested parties in said action,

____ by personally delivering it to the person(s) indicated below in the manner as provided in FRCivP5(b);

_X_ by depositing it in the United States Mail at Long Beach, California, in a sealed envelope with the postage fully prepaid to the following;

Mark D. Potter, Esq.
Russell C. Handy, Esq.
CENTER FOR DISABILITY ACCESS, LLP
100 East San Marcos Blvd., Suite 400
San Marcos, CA 92069-2988
(760) 480-4162; (760) 480-4170 Fax

____ I hereby certify that I am a member of the Bar of the United States District Court, Central District of California.

_X_ I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

_X_ I hereby certify under the penalty of perjury that the foregoing is true and correct.

Executed on August 21, 2008, at Long Beach, California.

[signature]
Barbara A. Ezra

EXHIBIT A

CIVIL

2008 JUL 16 P 12:26

CENTER FOR DISABILITY ACCESS, LLP
MARK D. POTTER, ESQ., SBN 166317
RUSSELL C. HANDY, ESQ., SBN 195058
100 East San Marcos Blvd., Suite 400
San Marcos, CA 92069-2988
(760) 480-4162
Fax (760) 480-4170

Attorney for Plaintiff, LENETTE BARKER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

LENETTE BARKER,

Plaintiff,

v.

HIHC, LLC, A California Limited Liability Company; COLONY CONSOLIDATED, L.P., A Limited Partnership, and DOES 1 through 100, inclusive

Defendants.

Case No.: 37-2008-00087782-CU-CR-CTL

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF FOR VIOLATIONS OF: AMERICAN'S WITH DISABILITIES ACT; UNRUH CIVIL RIGHTS ACT; CALIFORNIA DISABLED PERSONS ACT; NEGLIGENCE

DEMAND FOR JURY

Plaintiffs LENETTE BARKER complains of Defendants HIHC, LLC, A California Limited Liability Company; COLONY CONSOLIDATED, L.P., A Limited Partnership, and DOES 1 through 100, inclusive, (hereinafter referred to as "Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. She suffers from Multiple Sclerosis and requires a wheelchair for mobility.

2. Defendants are or were at the time of the incident the owners and operators and/or lessors and lessees of the Hotel located at 631 Camino Del Rio South, San

Diego, California.

3. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and common enterprise by all such Defendants. Plaintiff is informed and believes that each of the Defendants herein, including DOES 1 through 100, inclusive, is responsible in some capacity for the events herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend when the true names, capacities, connections, and responsibilities of the Defendants and DOES 1 through 100, inclusive, are ascertained

FACTUAL ALLEGATIONS:

4. The Hotel is a facility open to the public, a place of public accommodation, and a business establishment.

5. The Plaintiff stayed with family members at the Hotel March 12 and 13, 2008.

6. During her visit, the Plaintiff encountered various violations of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of the California Code of Regulations, including, but not limited to, the accessible rooms in the Hotel were not dispersed among the various classes of sleeping accommodations to provide a range of options applicable to room sizes, costs, amenities provided, and the number of beds provided.

7. Naturally, Plaintiff BARKER was frustrated, angry and/or vexed as a result of encountering these conditions, these violations of her civil rights, and the lack of safe, convenient and accessible facilities. Although these injuries are modest in scope and did not result in any loss of wages or economic damage or medical care or attention, the continued violation of the Plaintiff's civil rights by these defendants and the highly unpleasant emotional distress caused by such unlawful treatment is attributable to the actions or inactions of the defendants and plaintiff seeks redress from these defendants

for such injury.

8. Plaintiff would like to return and patronize the Defendants' Hotel; however, the Plaintiff is unable to use the Hotel on a "full and equal" basis until the Hotel is brought into compliance with the provisions of the Americans with Disabilities Act Accessibility Guidelines and state accessibility law as pled herein. Plaintiff has been and currently is being deterred from returning and patronizing the Defendants' Hotel on a full and equal basis.

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and Against All Defendants) (Cal Civ § 51-53)

9. The Defendants are persons who either own, operate, lease or lease to a place of public accommodation. As such, the Defendants are required to (1) ensure that all construction, alteration, or modification is barrier free and complies with the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of the California Code of Regulations (aka "California Building Code"); and/or (2) remove all existing barriers where such removal is "readily achievable." The Defendants have failed to meet these obligations. The existence of readily achievably removed barriers and barriers in violation of the ADAAG and/or California Building Code, including, but not limited to, the accessible rooms in the Hotel were not dispersed among the various classes of sleeping accommodations to provide a range of options applicable to room sizes, costs, amenities provided, and the number of beds provided, is unlawful and has resulted in the defendants' failure to provide full and equal accommodations, advantages, facilities, privileges and/or services to the Plaintiffs.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and Against All Defendants) (Cal Civ § 51-53)

10. The Defendants are persons who either own, operate, lease or lease to a place of public accommodation or business establishment. As such, the Defendants are required to (1) ensure that all construction, alteration, or modification is barrier free and

complies with the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of the California Code of Regulations (aka "California Building Code"); and (2) remove all existing barriers where such removal is "readily achievable." The Defendants have failed to meet these obligations. The Defendants intended the physical and architectural condition of their property. The existence of readily achievably removed barriers and barriers in violation of the ADAAG and/or California Building Code, including, but not limited to, the accessible rooms in the Hotel were not dispersed among the various classes of sleeping accommodations to provide a range of options applicable to room sizes, costs, amenities provided, and the number of beds provided, is unlawful and has resulted in the defendants' failure to provide full and equal accommodations, advantages, facilities, privileges and/or services to the Plaintiff.

11. The acts alleged above, which form the basis of the Plaintiff's discrimination claim, are intentional acts.

III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA DISABLED PERSONS ACT (On behalf of Plaintiff and Against All Defendants) (Cal Civ § 54-54.8)

12. The Defendants are persons who either own, operate, lease or lease to a place of public accommodation or a facility open to the public. As such, the Defendants are required to (1) ensure that all construction, alteration, or modification is barrier free and complies with the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of the California Code of Regulations (aka "California Building Code"); and (2) remove all existing barriers where such removal is "readily achievable." The Defendants have failed to meet these obligations. The existence of readily achievably removed barriers and barriers in violation of the ADAAG and/or California Building Code, including, but not limited to, the accessible rooms in the Hotel were not dispersed among the various classes of sleeping accommodations to provide a range of options applicable to room sizes, costs, amenities provided, and the number of beds provided, is unlawful and has resulted in the defendants' failure to

provide full and equal accommodations, advantages, facilities, privileges and/or services to the Plaintiff.

IV. FOURTH CAUSE OF ACTION: NEGLIGENCE (On behalf of Plaintiff and Against All Defendants)

13. The Defendants had a general duty and a duty arising under the Americans with Disabilities Act and the Unruh Civil Rights Act and California Disabled Persons Act to provide safe, convenient, and accessible facilities to the Plaintiffs in the running of their Hotel. Their breach of this duty, as alleged in the preceding paragraphs, has caused injury and damage as alleged above.

PRAYER:

Wherefore, Plaintiff prays that this court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. **Note:** the Plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under that section.

2. Damages under the Unruh Civil Rights Act and/or the California Disabled Persons Act. **Note:** A Defendant cannot be held liable for damages under both the Unruh Civil Rights Act and the California Disabled Persons Act and the Plaintiff will make an election at trial depending upon the evidence amassed.

3. Reasonable attorneys' fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3 and Cal. Civ. Proc. § 1021.5.

Dated: July 11, 2008 CENTER FOR DISABILITY ACCESS, LLP

By: ______________________
MARK D. POTTER
Attorneys for Plaintiff

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 154338 - TC
*** * C O P Y * ***
August 21, 2008
13:58:59

Civ Fil Non-Pris
USAO #.: 08CV1547
Judge..: LARRY A BURNS
Amount.: $350.00 CK
Check#.: BC5433

Total-> $350.00

FROM: LENETTE BARKER
VS
COLONY CONSOLIDATED

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED 08 AUG 21 PM 1:57

I. (a) PLAINTIFFS
LENETTE BARKER

(b) County of Residence of First Listed Plaintiff ~~Unknown~~ SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Mark D. Potter, Esq., Center for Disability Access, LLP, 100 E. San Marcos Blvd., #400, San Marcos, CA 92069-2988

DEFENDANTS
COLONY CONSOLIDATED, LP

County of Residence of First Listed Defendant Orange
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) **'08 CV 1547 LAB RBB**
Tina I. Mangarpan, Esq., Ford, Walker, Haggerty & Behar, One World Trade Ctr., 27th Fl., Long Beach, CA 90831-2700

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☒ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
42 U.S.C.S. 12101, et seq.

Brief description of cause:
Plaintiff alleges violation of ADA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE
08/20/2008

SIGNATURE OF ATTORNEY OF RECORD
Tina I. Mangarpan [signature]

FOR OFFICE USE ONLY

RECEIPT # 154338 AMOUNT $350 APPLYING IFP JUDGE MAG. JUDGE

TAC 8/21/08